IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	)	
	)	
BURCH, MATTHEW C.	)	**Attorney Docket No.: 702.165**
	)	
Serial No.: 10/071,560	)	
	)	
Filed: February 8, 2002	)	**Group Art Unit No. 2164**
	)	
SYSTEMS AND METHODS FOR TRACK LOG SELECTION	)	**Examiner: ORTIZ, BELIX M.**

REPLY BRIEF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	)	
	)	
BURCH, MATTHEW C.	)	**Attorney Docket No.: 702.165**
	)	
Serial No.: 10/071,560	)	
	)	
Filed: February 8, 2002	)	**Group Art Unit No. 2164**
	)	
SYSTEMS AND METHODS FOR TRACK LOG SELECTION	)	**Examiner: ORTIZ, BELIX M.**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF ON APPEAL

Appellant's reply brief on Appeal in accordance with 37 C.F.R. § 41.41 is hereby submitted. The Examiner's rejections of claims 1-45 remain appealed, and allowance of said claims is respectfully requested.

Any fee which is due in connection with this brief should be applied against our Deposit Account No. 501-791.

Respectfully submitted,

By: /David L. Terrell/

David L. Terrell, Reg. No. 50,576
Garmin International, Inc.
1200 East 151st Street
Olathe, KS 66062
(913) 397-8200
(913) 397-9079 (Fax)

The requisite statements under 37 C.F.R. § 41.37 were made in the Appeal Brief and acknowledged in the Examiner's Answer.

Claims 1-45 stand rejected under 35 U.S.C. 102(e) as being anticipated by Ran, U.S. Patent No. 6,317,686. Appellant appeals from this rejection.

A. Summary of Claimed Subject Matter

Track logs are used in navigational aid devices to provide an indication of where that device has been. Specifically, track logs are arrays of points used to track a location of the navigational aid device. Track logs may be visualized as a trail of electronic bread crumbs, such as an electronic version of Hansel and Gretel's bread crumb trail, where each bread crumb is a track log point that identifies a position and a time the device was at that position. Therefore, track logs are purely historical, but specific to a device, since they provide an indication of where that device has been. Thus, track logs are more than mere collections or averages of unidentifiable indiscriminate data.

Many navigational aid devices having Global Positioning System (GPS) capabilities record track logs. It is further known to facilitate selection of a track log by presenting a user with a menu that shows recorded start and/or end points. However, the present invention is not limited to selecting track logs by their start and/or end points. Rather, the present invention allows any portion of a desired track log to be selected individual track log points, or even a time associated with a track log, thereby allowing more powerful and flexible applications for the navigational aid devices.

It should be noted that while track logs are comprised of specific individual track log points that identify where a specific device was at a specific time, and are therefore reflective of where that device has been, track logs may be shared between devices. For Example, a first device may record a track log and that track log may be shared with and used on a second device. However, the track log remains reflective of where that first device has been, even when used on the second device.

In one embodiment, a desired first endpoint and a desired second endpoint may be specified for a desired track log. These endpoints can be specified by a variety of methods, such as specifying a time and/or a location. The present invention can search for track logs containing the desired endpoints, not just starting or ending at these endpoints. Specifically, the present invention seeks to identify the desired endpoints from anywhere within the track logs. In other words, the present invention is not limited to identifying track logs by their endpoints and can look within the track logs to individual points along the track log. If those exact points are not found, the present invention can search for track logs containing points close, in time and/or space, to the desired endpoints. In this manner, actual first and second endpoints are assigned based on the desired endpoints and an available set of track log points. Thus, the desired track log is identified using the actual endpoints and at least one track log point.

B. Summary of Ran Reference

Ran teaches a system for predicting travel times along a proposed route between locations based on anonymous collections of real-time and historic traffic data. For

example, as disclosed in column 1, Ran gets his historical data from many sources, such as "each state's Department of Transportation". Thus, the only historical information Ran discusses is essentially average travel times between two points, collected by governmental sources who would be prohibited from providing more specific position and time reports that would in any way resemble track logs. Rather, the historical information provided by these sources must be averages of transit times of anonymous travelers. Specifically, such averages are simply not analogous to, nor suggestive of, "track logs", as described in the specification and used in the claims. More specifically, such traffic data can only reflect an average of numerous trips involving numerous anonymous vehicles, and therefore cannot "provide an indication of where a specific device has been", as the present specification defines track logs.

Furthermore, rather than any specific discrete time or historical time period, Ran is strictly concerned with elapsed travel times between two fixed endpoints. Therefore, Ran's historical data is not comprised of individual track log points that identify a specific and discrete time and location.

Simply put, Ran teaches a system for predicting travel times along a proposed route between specified locations based on averaged traffic data. In no way does Ran seek to select a specific track log, comprised of individual track log points, which documents a specific device's travel over a specific time period. Since Ran does not select such individual track logs, or even discuss track logs, Ran simply cannot anticipate the claimed method for doing so.

C. Summary of Arguments

Appellant respectfully submits that the Examiner's rejections should not be sustained because the cited Ran reference simply fails to anticipate the claimed invention.

D. Legal Discussion of Anticipation

> 35 U.S.C. § 102 Conditions for patentability; novelty and loss of right to patent
>
> A person shall be entitled to a patent unless—
> …
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). More specifically, "Federal Circuit decisions repeatedly emphasize that anticipation (lack of novelty) is established only if (1) all the elements of an invention, as stated in a patent claim, (2) are identically set forth, (3) in a single prior art reference". Chisum on Patents § 3.02. *See also* Gechter v. Davidson, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997) ("Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim.").

E. The Examiner Failed To Establish A Prima Facie Case of Anticipation As

The Cited Reference Fails To Disclose Each And Every Claimed Element Of The Present Invention.

Ran fails to disclose track logs,

and therefore fails to disclose identifying or validating track logs.

As discussed above, Ran simply does not teach "track logs", as described in the specification and claimed in the claims. As Ran fails to teach "track logs", Ran also fails to teach other specific claim limitations, such as those specifically related to the characteristics of track logs, as defined in the specification and used in the claims. For example, Ran simply does not disclose "specifying a desired first endpoint and a desired second endpoint for a desired track log", "assigning an actual first endpoint for the track log based on the desired first endpoint and ***a set of track log points***, and an actual second endpoint for the track log based on the desired second endpoint and ***the set of track log points***", and "identifying the desired track log using the actual first endpoint, the actual second endpoint, and at least one ***track log point***", emphasis added, as claimed in claim 1. In fact, Ran would have no need for assigning actual endpoints based on desired endpoints, because, for Ran, they would be one and the same. Rather, as discussed above, Ran simply discloses ***predicting*** travel times along a ***proposed*** route identified by proposed endpoints. Furthermore, Ran fails to disclose "track log points", as described in the specification and used in the claims. Thus, Ran simply does not anticipate the limitations of claim 1.

Similarly, as Ran does not teach "track logs", Ran does not teach "receive desired endpoints for a desired track log", "assign actual endpoints for the track log based on the desired endpoints and a set of ***track log points***", and "identify the desired track log using the actual endpoints and at least ***one track log point***", as claimed in claims 14 and 39. As discussed above, Ran simply does not anticipate track logs, much less discrete track log points, or the other limitations of claims 14 and 39.

As Ran does not teach "track logs", Ran does not teach validating endpoints of a track log, as claimed in claims 2 and 20. As a result, Ran does not anticipate "validating the desired first endpoint and the desired second endpoint", as claimed in claim 2, or "validate the desired endpoints", as claimed in claim 20.

As Ran does not teach "track logs", or track log points, Ran does not teach "wherein the memory includes a set of track log points" and "wherein the device is adapted to select a desired track log based on a first user-specified desired endpoint and a second user-specified desired endpoint", as claimed in claim 22, or "wherein the memory includes a set of ***track log points***", "assign actual endpoints for the track log based on a time for the desired endpoints and a set of ***track log points***", and "identify the desired track log using the actual endpoints and at least one ***track log point*** from the set of ***track log points***", as claimed in claim 31. As discussed above, Ran simply does not anticipate track logs, much less discrete track log points or the other limitations of claims 22 and 31.

As Ran is only concerned with known and fixed travel segments,

Ran fails to disclose any method for filtering track logs.

As Ran does not teach "track logs", or individual track log points, Ran does not teach filtering track log points, as claimed in claims 3 and 21. Specifically, Ran is simply limited to analyzing data between fixed points. More specifically, Ran can only predict travel times between two known end points, and simply cannot perform any filtering of individual track log points. This is because Ran's system only posses data between two proposed endpoints, and simply possesses no data related to individual discrete points in between those endpoints. This is a fundamental difference between Ran's data and the track logs of the present invention. Ran's data simply does not include the individual track log points, and therefore is not analogous to the claimed track logs, and therefore simple cannot be filtered according to the claimed methods.

For example, suppose a traveler wishes to predict a travel time between Kansas City and Saint Louis. Ran's system can utilize its traffic data to generate such a prediction. However, if Ran's traffic data includes only traffic data based on travel times between Kansas City and Saint Louis, Ran cannot accurately predict travel time for any intermediate points. Specifically, Ran cannot filter any data to generate a predicted travel time between Kansas City and Columbia, MO, for example. While it may be possible, for Ran's data to include more detailed segmenting, Ran would simply select the applicable segments, rather than filter any track log points, as described in the specification and claimed in the claims.

As a result, Ran does not anticipate "filtering track log points for the desired track log extending between the actual first endpoint and the actual second endpoint", as claimed in

claim 3, or "filter track log points for a path extending between the actual first endpoint and the actual second endpoint", as claimed in claim 21.

As Ran is only concerned with elapsed times,

Ran fails to disclose associating a specific time with a specific location.

Ran simply does not teach "identifying a time associated with the nearest track log point", as claimed in claim 4. Specifically, as described in the specification and used in the claims, "a time associated with [a] track log point" is, the time that a device was actually at a position associated with that track log point. Thus, the time associated with a track log point, as described in the specification and claimed in the claims, is a discrete time rather than an elapsed time between points.

In contrast, Ran is only interested in an elapsed time between points, rather than any specific time a device was at a specific point. This is because, as discussed above, Ran's data simply does not include individual track log points identifying a specific time a device was at a specific point. As a result, Ran does not anticipate "searching for a nearest track log point that is located closest to at least one of the desired first endpoint and the desired second endpoint that is capable of being specified by specifying a location", "identifying a time associated with the nearest track log point", and "finding an index of the nearest track log point in a time range", as claimed in claim 4.

As Ran does not teach "track logs", or specific discrete times associated therewith, Ran does not teach "selecting a method for specifying a time of at least one track log endpoint", "specifying desired endpoints for a desired track log using one or more of the

selected methods for specifying a time of at least one track log endpoint", "assigning actual endpoints for the track log based on a time for the desired endpoints and a set of track log points", and "identifying the desired track log using the actual endpoints and at least one track log point from the set of track log points", as claimed in claim 10. As discussed above, Ran simply does not anticipate track logs, much less discrete times associated with track log endpoints or the other limitations of claim 10.

Similarly, Ran does not teach "selecting a track log endpoint from a list of track log points that are associated with a time", as claimed in claim 11, "entering a time that is used to identify the at least one track log endpoint", as claimed in claim 12, "identifying a time associated with the nearest track log point", as claimed in claim 13, Claim 36 recites "display a list of track log points that are associated with a time", as claimed in claim 36, or "identify a time associated with the nearest track log point", as claimed in claim 38. Specifically, claims 11, 12, 13, 36, and 38 have limitations directed to discrete times, rather than elapsed times, such as Ran's predicted and historical travel times. As a result, Ran simply does anticipate the limitations of claims 11, 12, 13, 36, and 38.

F. Conclusion

It is well established that a patentee may be his own lexicographer. Thus, patentees are allowed to define the terms he or she uses as they see fit. This alone would allow the above definition of track logs and track logs points to distinguish the claimed invention from Ran. However, even this doctrine should not be necessary, as the present specification and claims simply define and use these terms in their normal customary manner.

Appellant is simply asking that these terms be given their normal customary definition, and not be distorted as the Examiner sees fit.

In the present case, the Examiner failed to establish the requisite prima facie case of anticipation by failing to identify a reference that teaches each and every claimed element of the present invention. As the Examiner failed to establish the requisite prima facie case of anticipation, the rejections under 35 U.S.C. § 102(e) cannot be sustained and must be overturned.

Accordingly, reversal of the Examiner's rejections is proper, and such favorable action is solicited.

Respectfully submitted,

By: /David L. Terrell/
David L. Terrell, Reg. No. 50,576
Garmin International, Inc.
1200 East 151st Street
Olathe, KS 66062
(913) 397-8200
(913) 397-9079 (Fax)